

Residential Tenancies Tribunal

Decision 19-0765-05

Denise O'Brien
Adjudicator

Introduction

1. The hearing was called at 1:30 p.m. on November 5, 2019 at Residential Tenancies, Motor Registration Building, 149 Smallwood Drive, Mount Pearl, NL.
2. The applicants, [REDACTED], [REDACTED] and [REDACTED], hereafter referred to as the tenants, participated in the hearing.
3. The respondent, [REDACTED] represented by [REDACTED], hereafter referred to as the landlord, participated in the hearing.

Preliminary Matters

4. The landlord's application was amended to reflect the landlord as [REDACTED] not [REDACTED]. The claim for compensation for return of possession was reduced from \$195.46 to \$91.99.

Issues before the Tribunal

5. The tenants are seeking the following:
 - a. Return of the security deposit in the amount of \$1012.00.
6. The landlord is seeking the following:
 - a. Compensation for return of possessions in the amount of \$91.99;
 - b. Compensation for damages in the amount of \$1945.75;
 - c. Hearing expenses.

Legislation and Policy

7. The jurisdiction of the Director of Residential Tenancies is outlined in the Residential Tenancies Act, 2018 (the Act), Section 47.
8. Also relevant and considered in this case are Sections 10 and 14 of the Act and Policy 12-1: *Recovery of Fees: Filing, Costs and Hearing Expense, Interest, Late Payment and NSF*.

Issue 1: Return of possession - \$91.99

9. The landlord testified that the tenants moved into the unit on September 1, 2018 for a one year term with rent set at \$1350.00 per month due on the 1st of each month. The unit was a fully furnished unit. The tenants vacated on/about August 23, 2019. When the tenants moved out some items were missing. The following is a list of the missing items; 2 wine glasses, 4 cereal bowls, knives, a kitchen drawer knob, a coffee table and an end table. He said prior to the tenants moving in, he did not prepare an inventory of the cutlery or dishes in the unit.
10. The landlord purchased the knob for the drawer at The Home Depot at a cost of \$9.04; the wine glasses were purchased at Dollarama at a cost of \$3.45, and the bowls and the knife set were purchased at Walmart at a cost of \$27.46 for the bowls and \$12.04 for the knife set. He estimates that it will cost \$40.00 to replace the coffee and end table.
11. The landlord submitted into evidence a photograph of the drawer without a knob (LL #1), receipt from The Home Depot (LL #2), a receipt from Dollarama (LL #3), a receipt from Walmart (LL #4) and a photograph of the coffee and an end table (LL #5). He said he is not sure if that is the end table that was missing.

Tenant Position

12. The tenants testified that there were no bowls and they are not sure if there was a knob on the bottom drawer when they moved into the unit. They replaced the glasses that were missing. They also testified that the coffee table was put in the back porch at the start of the tenancy as it was broken. When they vacated the coffee table was still in the back porch and the end table was in the unit.

Analysis

13. I have reviewed the testimony and the evidence of the landlord and the tenants. I have determined that there is one issue that needs to be addressed; are the tenants responsible for the replacement of these items. I find that the landlord did not complete an inventory list of the items at the start of the tenancy. Also he did not present any evidence to prove that the coffee and end table were missing when the tenants vacated. Therefore, the landlord's claim for compensation for missing items fails.

Decision

14. The landlord's claim for compensation for missing items is unsuccessful.

Issue 2 - Payment of damages - \$1945.75

Landlord Position

15. The landlord testified that when the tenants vacated the unit, the unit needed to be cleaned. The owner of the unit spent 8½ hours (@ a rate of \$20.00 per hour for a total of \$170.00) cleaning the living and dining rooms and part of the kitchen. [REDACTED] was hired to clean the remainder of the house. She spend 8 hours cleaning the remainder of the kitchen, the bathroom and the bedrooms. She charged \$160.00 for the cleaning.
16. The landlord testified that there are four burn marks in a square of 12" x 5" on the hardwood floor in the living room. He received a quote from [REDACTED] in the amount of \$1615.75 to have the floor refinished. The quote is based on the photographs that he sent to the company. He is not sure when the last time the flooring was refinished.
17. The landlord submitted into evidence a receipt from [REDACTED] (LL #6), a quote from [REDACTED] (LL #7) and 2 photographs of the flooring in the living room (LL #8)

Tenant Position

18. The tenants testified that they cleaned the unit before they vacated and they weren't aware of any marks on the flooring. They said that the flooring was in a poor condition when they moved into the unit.

Analysis

19. I have reviewed the testimony of the landlord and the tenants. I have determined that there is one issue that needs to be addressed; were there

damages to the unit when the tenancy ended. The burden of proof lies with the landlord to establish, that the damage exists, and that the tenant is responsible for the cost of repairs. I find that the landlord did not present any evidence to show the condition of the flooring at the start of the tenancy. I also find that the landlord did not submit any evidence to establish that the unit needed to be cleaned when the tenancy ended. Therefore, the landlord's claim for compensation fails.

Decision

20. The landlord's claim for compensation for damages fails.

Issue 3: Application for Security Deposit

21. Under the authority of Section 41.(j) the director may authorize a landlord to offset money a tenant owes to the landlord against money the landlord owes to the tenant. Further under subsection (m), the director has the authority to determine the disposition of the security deposit.

Tenant Position

22. The tenants testified that a \$1012.00 security deposit was paid on August 13, 2018.

Landlord Position

23. The landlord acknowledges a \$1012.00 security deposit was paid in August 2018.

Analysis

24. A \$1012.00 security deposit was paid in August 2018. As the landlord's claim for compensation for return of possessions and damages is unsuccessful, the landlord shall return the security deposit to the tenants.

Decision

25. The landlord shall return the security deposit as outlined in this decision and attached order.

Issue 4: Hearing Expenses - \$25.00

26. Under the authority of Section 47.(q) the director may require the unsuccessful party to pay costs to the successful party to an application. Costs eligible to be

awarded are identified in *Policy 12-1: Recovery of Fees: Filing, Costs and Hearing Expense, Interest, Late Payment and NSF*.

Landlord Position

27. The landlord paid an application filing fee in the amount of \$20.00 and \$5.00 to have photographs developed. The landlord is seeking these costs.

Analysis

28. The cost the landlord incurred to make the application and to have the photographs developed are considered reasonable expenses as per *Policy 12-1 Recovery of Fees: Filing, Costs and Hearing Expense, Interest, Late Payment and NSF*. As the landlord's claim has been unsuccessful, the claim for payment of hearing expenses fails.

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29. The landlord's claim for hearing expenses fails.

Summary of Decision

30. The tenants are entitled to the following:

a) Return of the security deposit\$1012.00

April 16, 2020
Date


Residential Tenancies Section